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**Opening Statement by Hon. Ileana Ros-Lehtinen**  
**Chair, Subcommittee on the Middle East and Central Asia**  
**Hearing: "Afghanistan: Democratization and Human Rights on the Eve of the**  
**Constitutional Loya Jirga"**  
**11:30 p.m., 2172 Rayburn, Wednesday, November 19, 2003**

It is personally gratifying for me to be here today to discuss the democratization process in Afghanistan and the path toward the Constitutional Loya Jirga.

A little over two years ago, on October 31<sup>st</sup>, in my previous capacity as Chair of the Subcommittee on International Operations and Human Rights, I held a hearing entitled: Afghan People vs. The Taliban: The Struggle for Freedom Intensifies.

Friends and colleagues such as Assistant Secretary Craner and T. Kumar, who will testify today, along with a cross-section of exiled Afghans, detailed the deplorable human rights situation under the Taliban regime, and the barbaric practices of beatings, torture, rape, and executions carried out by the Taliban's Department of Promotion of Virtue and the Prevention of Vice.

The shroud of misery placed on the people of Afghanistan when the Taliban captured Kabul in 1996 was removed and, today, Afghans are rebuilding their nation and preparing to usher in a new era of representative democracy in their homeland.

While all is not perfect, the situation has changed dramatically.

The progress made was encapsulated by the International Crisis Group in a statement issued on March 14<sup>th</sup> of this year.

The ICG statement said: "The creation of a Ministry of Women's Affairs, significant donor commitment and the return of women to universities, schools and government offices heralded a new day for women in Afghanistan..." It continued: "There is little reason to doubt the commitment of the Karzai administration and its international partners to address discrimination against women and improve their access to civic life."

For many, this commitment is reflected in the draft constitution where, Article 22, states: "Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited," and "The citizens of Afghanistan have equal rights and duties before the law."

Articles 44, 83, and 84 of the Constitution, mandate the promotion of women's education and elimination of illiteracy, while establishing requirements that seek to ensure female representation throughout the government.

However, women's rights advocates still have serious concerns regarding the rights of female Afghan citizens, as currently stipulated in the draft Constitution.

Masooda Jalal, a former female presidential candidate in 2002, was quoted as saying that, after reading the draft document, she was not sure whether the constitution "was serving fundamentalism or liberalism," but would wait to see what the Loya Jirga discussions produce before making a final decision.

Others focus on the context in which these provisions will be implemented, highlighting that women are often subject to physical and psychological harm, which has limited their ability to participate in civil society.

Just last week, an Afghan Information Agency reported that, in two provincial districts, the election of women to the Constitutional Loya Jirga was suspended, after opposition from Sunni sect religious scholars. This was reportedly confirmed by a member of the Constitution Commission of Afghanistan.

These concerns increase as, according to some, the conservative religious tendencies of Afghan society are enshrined in the Constitution and could, in its practical application, empower extremist elements in the country.

For example, Article Two of the draft Constitution begins by affirming that: "Followers of other religions are free to perform their religious ceremonies," yet it ends by placing this guarantee "...within the limits of the provisions of law."

This is followed by Article Three, which highlights that: "In Afghanistan, no law can be contrary to the sacred religion of Islam and the values of the Constitution."

We look forward to hearing from Ambassador Hanford on the state of religious freedom in Afghanistan and how these and other articles in the Constitution are reconciled to provide for, and protect, the fundamental freedoms of conscience and belief.

Ultimately, as one member of the Constitution Commission has said, "the draft aims to balance modern needs with those of a Muslim-majority nation..."

The Vice President and head of the Constitution Commission, during a news briefing following the release of the text, said that the draft document aimed to unite Afghanistan's often fractious ethnic groups and promote the basic human rights so often abused during 21 years of war.

The preamble and numerous articles clearly establish the parameters within which the Afghan Government will operate, and these are according to the Universal Declaration of Human Rights.

They detail, as in Article 24, that: “Liberty and dignity of human beings are inviolable” and that “The State has the duty to respect and protect the liberty and dignity of human beings.”

The draft document contains prohibitions on torture and inhumane forms of punishment; on crimes against humanity; and on forced labor.

Concurrently, there are articles that protect freedom of expression; freedom of movement; and provide for due process rights such as presumption of innocence; guaranteed legal representation; protection against arbitrary arrest and detention; protection against unlawful search and seizure; among others.

With respect to the political process, Article 35 articulates the right of all Afghans to form political parties, while requiring that the organizational structure and financial resources be made public; that its aims and structures not be military or paramilitary in nature; and that it have no ties to foreign political parties or influences.

This section seeks to prevent tribalism and factionalism by prohibiting the “formation and functioning of a party based on ethnicity, language, religion, and region.”

Some would argue, however, that this article is internally contradictory, given that the formation of political parties is allowed, provided that: “The program and charter of the party are not contrary to the principles of the sacred religion of Islam...”

The balance between Afghanistan’s deep-rooted Islamic traditions and its aspirations for democratic rule; between protecting the fundamental human rights and civil liberties of its citizens and ability to govern, are among the issues that Assistant Secretary Craner and our distinguished private panel, will effectively address.

Also, given that Article 149 of the draft Constitution says that amendments to the “fundamental rights of the people are permitted only in order to make them more effective,” we would welcome recommendations from our witnesses on areas they believe should be modified or clarified.

We hope that our witnesses will also address other concerns that have been raised by Afghans and international observers alike, such as:

- Does the Constitution truly provide equal access to all Afghans, regardless of gender, faith or belief, or ethnic background?
- Will a Loya Jirga of 500 delegates be able to articulate the views of millions of Afghans?
- Are the Afghan people adequately prepared and educated on the process, to make an informed decision on the Constitution and their future system of government?
- Do they have the necessary resources?

Looking to the future, and to place it in the broader context, we would like Assistant Secretary Rocca to address such matters as:

- What are the long-term ramifications of a democratic Afghanistan, for regional stability and our counter-terrorism efforts?
- How do we see the draft Constitution addressing the precursor conditions leading to extremism?
- What about reports about Pakistan's and Iran's efforts to use their contributions to the reconstruction effort in Afghanistan to influence the process and gain control?

As President Bush noted at the signing ceremony of the Supplemental Appropriations bill on November 6<sup>th</sup>, “the strategy of our enemies...is to intimidate newly free men and women who are trying to establish democracy.”

The Afghan people will not let these elements succeed.

The Afghan people are determined to take steps to ensure Afghanistan's survival as a free nation. We have faith in their determination and commitment to freedom and to their country.

As President Karzai said in January 2002 at a gathering of Afghans and friends of Afghanistan: “The Afghan people are ‘tough cookies.’”

Indeed they are, and the U.S. stands ready to continue helping them in their efforts.